

AMENDED IN ASSEMBLY APRIL 16, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 303

Introduced by Assembly Member Gonzalez

February 12, 2015

An act to amend Section 4030 ~~of of~~, and to add Section 4031 to, the Penal Code, relating to searches.

LEGISLATIVE COUNSEL'S DIGEST

AB 303, as amended, Gonzalez. Searches: county jails.

Existing law establishes a statewide policy strictly limiting strip and body cavity searches of prearrest detainees arrested for infraction or misdemeanor offenses and of minors detained prior to a detention hearing on the grounds that he or she is alleged to have committed a misdemeanor or infraction offense. Existing law provides that if a person is arrested and taken into custody, that person may be subjected to patdown searches, metal detector searches, and thorough clothing searches in order to discover and retrieve concealed weapons and contraband substances prior to being placed in a booking cell. Existing law ~~requires~~ *requires, among other things, that* all persons conducting or otherwise present during a strip search or visual or physical body cavity search to be of the same sex as the person being searched, except for physicians or licensed medical personnel. Under existing law, a person who knowingly and willfully authorizes or conducts a strip, visual, or physical body cavity search in violation of the prescribed provisions is guilty of a misdemeanor.

This bill would additionally require that all persons within sight of the inmate during a strip search or visual or physical body cavity search be of the same sex as the person being searched, except for physicians or licensed medical personnel. *The bill would extend the protections regarding the manner in which a strip search is conducted to all juvenile inmates.* By expanding the definition of a ~~crime~~ *crime*, creating a new *crime*, and imposing additional requirements on local law enforcement, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4030 of the Penal Code is amended to
2 read:

3 4030. (a) The Legislature finds and declares that law
4 enforcement policies and practices for conducting strip or body
5 cavity searches of detained persons vary widely throughout
6 California. Consequently, some people have been arbitrarily
7 subjected to unnecessary strip and body cavity searches after arrests
8 for minor misdemeanor and infraction offenses. Some present
9 search practices violate state and federal constitutional rights to
10 privacy and freedom from unreasonable searches and seizures.

11 It is the intent of the Legislature in enacting this section to protect
12 the state and federal constitutional rights of the people of California
13 by establishing a statewide policy strictly limiting strip and body
14 cavity searches.

15 (b) The provisions of this section shall apply only to
16 prearrest detainees arrested for infraction or misdemeanor
17 offenses and to any minor detained prior to a detention hearing on
18 the grounds that he or she is a person described in Section 300,

601, or 602 of the Welfare and Institutions Code alleged to have committed a misdemeanor or infraction offense. The provisions of this section shall not apply to any person in the custody of the Director of the Department of Corrections or the Director of the Youth Authority.

(c) As used in this ~~section~~, *section and Section 4031*, “strip search” means a search which requires a person to remove or arrange some or all of his or her clothing so as to permit a visual inspection of the underclothing, breasts, buttocks, or genitalia of such person.

(d) As used in this ~~section~~: *section and Section 4031*:

(1) “Body cavity” only means the stomach or rectal cavity of a person, and vagina of a female person.

(2) “Visual body cavity search” means visual inspection of a body cavity.

(3) “Physical body cavity search” means physical intrusion into a body cavity for the purpose of discovering any object concealed in the body cavity.

(e) Notwithstanding any other provision of law, including Section 40304.5 of the Vehicle Code, when a person is arrested and taken into custody, that person may be subjected to patdown searches, metal detector searches, and thorough clothing searches in order to discover and retrieve concealed weapons and contraband substances prior to being placed in a booking cell.

(f) No person arrested and held in custody on a misdemeanor or infraction offense, except those involving weapons, controlled substances or violence nor any minor detained prior to a detention hearing on the grounds that he or she is a person described in Section 300, 601 or 602 of the Welfare and Institutions Code, except for those minors alleged to have committed felonies or offenses involving weapons, controlled substances or violence, shall be subjected to a strip search or visual body cavity search prior to placement in the general jail population, unless a peace officer has determined there is reasonable suspicion based on specific and articulable facts to believe such person is concealing a weapon or contraband, and a strip search will result in the discovery of the weapon or contraband. No strip search or visual body cavity search or both may be conducted without the prior written authorization of the supervising officer on duty. The authorization shall include the specific and articulable facts and

1 circumstances upon which the reasonable suspicion determination
2 was made by the supervisor.

3 (g) (1) Except pursuant to the provisions of paragraph (2), no
4 person arrested and held in custody on a misdemeanor or infraction
5 offense not involving weapons, controlled substances or violence,
6 shall be confined in the general jail population unless all of the
7 following are true:

8 (A) The person is not cited and released.

9 (B) The person is not released on his or her own recognizance
10 pursuant to Article 9 (commencing with Section 1318) of Chapter
11 1 of Title 10 of Part 2.

12 (C) The person is not able to post bail within a reasonable time
13 not less than three hours.

14 (2) No person may be housed in the general jail population prior
15 to release pursuant to the provisions of paragraph (1) unless a
16 documented emergency exists and there is no reasonable alternative
17 to such placement. Such person shall be placed in the general
18 population only upon prior written authorization documenting the
19 specific facts and circumstances of the emergency. The written
20 authorization shall be signed by the uniformed supervisor of the
21 facility or by a uniformed watch commander. Any person confined
22 in the general jail population pursuant to paragraph (1) shall retain
23 all rights to release on citation, his or her own recognizance, or
24 bail which were preempted as a consequence of the emergency.

25 (h) No person arrested on a misdemeanor or infraction offense,
26 nor any minor described in subdivision (b), shall be subjected to
27 a physical body cavity search except under the authority of a search
28 warrant issued by a magistrate specifically authorizing the physical
29 body cavity search.

30 (i) A copy of the prior written authorization required by
31 subdivisions (f) and (g) and the search warrant required by
32 subdivision (h) shall be placed in the agency's records and made
33 available, on request, to the person searched or his or her authorized
34 representative. With regard to any strip, visual or body search, the
35 time, date and place of the search, the name and sex of the person
36 conducting the search and a statement of the results of the search,
37 including a list of any items removed from the person searched,
38 shall be recorded in the agency's records and made available, upon
39 request, to the person searched or his or her authorized
40 representative.

1 (j) Persons conducting a strip search or a visual body cavity
2 search shall not touch the breasts, buttocks, or genitalia of the
3 person being searched.

4 (k) A physical body cavity search shall be conducted under
5 sanitary conditions, and only by a physician, nurse practitioner,
6 registered nurse, licensed vocational nurse or emergency medical
7 technician Level II licensed to practice in this state. Any physician
8 engaged in providing health care to detainees and inmates of the
9 facility may conduct physical body cavity searches.

10 (l) All persons conducting or otherwise present or within sight
11 of the inmate during a strip search or visual or physical body cavity
12 search shall be of the same sex as the person being searched, except
13 for physicians or licensed medical personnel.

14 (m) All strip, ~~visual~~ *visual*, and physical body cavity searches
15 shall be conducted in an area of privacy so that the search cannot
16 be observed by persons not participating in the search. Persons are
17 considered to be participating in the search if their official duties
18 relative to search procedure require them to be present at the time
19 the search is conducted.

20 (n) A person who knowingly and willfully authorizes or
21 conducts a strip, ~~visual~~ *visual*, or physical body cavity search in
22 violation of this section is guilty of a misdemeanor.

23 (o) Nothing in this section shall be construed as limiting any
24 common law or statutory rights of any person regarding any action
25 for damages or injunctive relief, or as precluding the prosecution
26 under another provision of law of any peace officer or other person
27 who has violated this section.

28 (p) Any person who suffers damage or harm as a result of a
29 violation of this section may bring a civil action to recover actual
30 damages, or one thousand dollars (\$1,000), whichever is greater.
31 In addition, the court may, in its discretion, award punitive
32 damages, equitable relief as it deems necessary and proper, and
33 costs, including reasonable attorney's fees.

34 *SEC. 2. Section 4031 is added to the Penal Code, to read:*

35 *4031. (a) This section applies to all minors detained on the*
36 *grounds that he or she is a person described in Section 300, 601,*
37 *or 602 of the Welfare and Institutions Code, and all minors*
38 *adjudged a ward of the court on the grounds he or she is a person*
39 *described in Section 300, 601, or 602 of the Welfare and*
40 *Institutions Code.*

1 **(b)** *Persons conducting a strip search or a visual body cavity*
2 *search shall not touch the breasts, buttocks, or genitalia of the*
3 *person being searched.*

4 **(c)** *A physical body cavity search shall be conducted under*
5 *sanitary conditions, and only by a physician, nurse practitioner,*
6 *registered nurse, licensed vocational nurse or emergency medical*
7 *technician Level II licensed to practice in this state. Any physician*
8 *engaged in providing health care to detainees and inmates of the*
9 *facility may conduct physical body cavity searches.*

10 **(d)** *All persons conducting or otherwise present or within sight*
11 *of the inmate during a strip search or visual or physical body*
12 *cavity search shall be of the same sex as the person being searched,*
13 *except for physicians or licensed medical personnel.*

14 **(e)** *All strip, visual, and physical body cavity searches shall be*
15 *conducted in an area of privacy so that the search cannot be*
16 *observed by persons not participating in the search. Persons are*
17 *considered to be participating in the search if their official duties*
18 *relative to search procedure require them to be present at the time*
19 *the search is conducted.*

20 **(f)** *A person who knowingly and willfully authorizes or conducts*
21 *a strip, visual, or physical body cavity search in violation of this*
22 *section is guilty of a misdemeanor.*

23 **(g)** *Nothing in this section shall be construed as limiting any*
24 *common law or statutory rights of any person regarding any action*
25 *for damages or injunctive relief, or as precluding the prosecution*
26 *under another provision of law of any peace officer or other person*
27 *who has violated this section.*

28 **(h)** *Any person who suffers damage or harm as a result of a*
29 *violation of this section may bring a civil action to recover actual*
30 *damages, or one thousand dollars (\$1,000), whichever is greater.*
31 *In addition, the court may, in its discretion, award punitive*
32 *damages, equitable relief as it deems necessary and proper, and*
33 *costs, including reasonable attorney's fees.*

34 ~~SEC. 2.~~

35 **SEC. 3.** No reimbursement is required by this act pursuant to
36 Section 6 of Article XIII B of the California Constitution for certain
37 costs that may be incurred by a local agency or school district
38 because, in that regard, this act creates a new crime or infraction,
39 eliminates a crime or infraction, or changes the penalty for a crime
40 or infraction, within the meaning of Section 17556 of the

1 Government Code, or changes the definition of a crime within the
2 meaning of Section 6 of Article XIII B of the California
3 Constitution.

4 However, if the Commission on State Mandates determines that
5 this act contains other costs mandated by the state, reimbursement
6 to local agencies and school districts for those costs shall be made
7 pursuant to Part 7 (commencing with Section 17500) of Division
8 4 of Title 2 of the Government Code.

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